In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-607

MRS. B. J. GAILLOT, JR., PETITIONER

v.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner brought this declaratory judgment action to challenge the policy of the Department of Health, Education and Welfare of denying federal assistance to state hospitals which classify blood according to the race of the donor.[1] She contends that the policy results in the denial of her First Amendment rights because her religious convictions preclude transfusion of blood from a person of another race.[2] The district court dis-

[1] The policy is based upon Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and the regulations promulgated under it, 45 C.F.R. 80.1, *et seq.*

[2] She also urges for the first time in this Court that the policy conflicts with state statutes.

missed the complaint, finding that petitioner had not shown subject matter jurisdiction and had not stated a claim upon which relief could be granted.[1] The Court of Appeals for the Fifth Circuit affirmed *per curiam* (Pet. App. A).

The opinions below, upon which we rely, show that the district court properly dismissed this suit.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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[1] Petitioner did not include the order of the district court in her appendix. We have included it here for the convenience of the Court.

APPENDIX

Minute Entry
June 4, 1971
Christenberry, J.

Mrs. B. J. Gaillot, Jr.	Section "A"
vs.	No. 70-1586
United States Department of Health, Education & Welfare	Civil Action

Mrs. B. J. Gaillot, Jr. has filed in proper person a "Petition for a 'Declaratory Judgment' Relevant to the 'Labeling of Blood by Race.'" Petitioner attacks certain directives of the United States Department of Health, Education & Welfare prohibiting the racial labeling of blood by state hospitals receiving federal aid. Defendant, United States Department of Health, Education & Welfare moved this court to dismiss the complaint on the grounds that it failed to state adequate grounds for the jurisdiction of the court as required by Rule 8 of the F.R.C.P., that it failed to state a claim upon which relief can be granted, and that the United States Department of Health, Education & Welfare is not a suable entity.

At the initial hearing in the matter, the motion was denied with plaintiff being given 30 days in which to amend her complaint. Plaintiff amended her complaint and the defendant's motion to dismiss was renewed.

Now, after having considered the pleadings, the arguments and memoranda of counsel, the court finds that defendant's motion to dismiss is meritorious and should be granted.

In her amended complaint petitioner has again failed to demonstrate the basis for this court's jurisdiction. This alone renders her complaint fatally defective. Ivey v. Frost, 346 F.2d 115 (8th Cir. 1965). Styling the complaint as one for declaratory judgment does not relieve plaintiff of her duty to state an independent source of jurisdiction. U.S. v. Smith, 393 F.2d 318 (5th CCA 1968).

Aside from this however, is plaintiff's failure to show how she is directly injured by the enforcement of the Department of Health, Education & Welfare's directive. Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 341 (1936) (Brandeis, J., concurring). She has not shown that she has sustained or in the future will sustain any direct personal injury. Her allegations do no more than allege in vague and indefinite terms that she may suffer an injury which, if it exists at all, will be shared by all people in common. Clearly, there is no justiciable case or controversy, and there being none, plaintiff has failed to state a claim upon which relief can be granted. Accordingly,

IT IS ORDERED that the motion of defendant, United States Department of Health, Education and Welfare, to dismiss be and it is hereby GRANTED.

MRS. B. J. GAILLOT, JR.
CLAUDE J. AUCOIN, JR., ESQ.

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